

REPORTS OF STANDING COMMITTEES

MR. SPEAKER:

The Committee on **Judiciary** recommends **SB 124**, as amended by Senate Committee of the Whole, be amended on page 2, in line 7, by striking all after "(b)"; by striking all in lines 8 through 10 and inserting "(1) Except as provided in subsection (b)(3), an arrangement, contract, agreement, trust, understanding or combination shall not be deemed a trust pursuant to the Kansas restraint of trade act and shall not be deemed unlawful, void, prohibited or wrongful under any provision of the Kansas restraint of trade act if that arrangement, contract, agreement, trust, understanding or combination is a reasonable restraint of trade or commerce. An arrangement, contract, agreement, trust, understanding or combination is a reasonable restraint of trade or commerce if such restraint is reasonable in view of all of the facts and circumstances of the particular case and does not contravene public welfare.

(2) Whether an arrangement, contract, agreement, trust, understanding or combination is a reasonable restraint of trade or commerce in view of all of the facts and circumstances, shall include, but not be limited to, an analysis of the following factors:

- (A) Specific information about the relevant industry;
- (B) whether the history, nature, and effect of the restraint stimulates or harms interbrand competition;
- (C) whether there were legitimate business justifications; and
- (D) whether the defendant involved has market power.

(3) The reasonableness standard described in subsections (b)(1) and (b)(2) shall not apply to any claim of horizontal price-fixing between or among competitors that otherwise

violates the Kansas restraint of trade act. A manufacturer or wholesaler that also engages in retail sales shall not be considered engaged in horizontal conduct with respect to sales the manufacturer or wholesaler makes to third-party retailers.";

Also on page 2, in line 11, by striking all after "(c)", by striking all in lines 12 through 23; in line 24, by striking all before "The"; in line 26, by striking "or becomes"; in line 27, by striking "subject to";

On page 4, in line 33, after "(b)" by inserting "(1)"; in line 35, by striking all after "by"; by striking all in lines 36 and 37; in line 38, by striking all before "shall" and inserting "the Kansas restraint of trade act"; in line 41, by striking "this" and inserting "the Kansas restraint of trade"; in line 43, after "defendant." by inserting "(2)";

On page 5, in line 3, after "recover" by inserting "either, but not both: (A)"; also in line 3, after "sustained" by inserting "; or (B) upon a showing of willful or wanton conduct by the defendant, the full consideration or sum paid by such person for any goods, wares, merchandise and articles included in or advanced or controlled in price by such defendant, or the full amount of money borrowed"; in line 4, after the period by inserting "(3)"; in line 6, by striking "such acts" and inserting "the Kansas restraint of trade act"; following line 14, by inserting:

"New Sec. 6. Section 1 and the amendments to K.S.A. 50-101, 50-158 and 50-161 by this act shall be applied retroactively to any cause of action premised on any provision of the Kansas restraint of trade act repealed by this act, and any such cause of action that has accrued as of March 1, 2013, shall be abated, but such causes of action that were pending in any court before March 1, 2013, shall not be abated. All other non-remedial provisions of this section shall be applied prospectively.";

And by renumbering sections accordingly;

And the bill be passed as amended.

_____Chairperson